

MINUTES

Commission Meeting

October 28, 2003
Newport News, VA

The regular October meeting of the Marine Resources Commission was held October 28, 2003 with the following persons present:

William A. Pruitt)	Commissioner
Chadwick Ballard, Jr.)	
Gordon M. Birkett)	
Ernest N. Bowden, Jr.)	
S. Lake Cowart, Jr.)	Associate Members
Russell Garrison)	
J. T. Holland)	
Cynthia M. Jones)	
F. Wayne McLeskey)	
Carl Josephson	Assistant Attorney General
Wilford Kale	Senior Staff Advisor
Michele Guilford	Acting Recording Secretary
Andy McNeil	Programmer Analyst Sr.
Bob Craft	Chief—Admin/Finance Div.
Jack Travelstead	Chief—Fisheries Mgt. Division
Rob O'Reilly	Deputy Chief—Fisheries Mgt. Div.
Roy Insley	Head—Plan/Statistics Dept.
James Wesson	Head—Conservation/Replenishment
Michael Meier	Head—Artificial Reef Program
Chad Boyce	Fisheries Management Specialist
Lewis Gillingham	Fisheries Management Specialist
Cory Routh	Fisheries Management Specialist
Ellen Cosby	Fisheries Management Specialist
Colonel Steve Bowman	Chief—Law Enforcement Div.
Capt. Warner Rhodes	Law Enforcement Middle Area
Capt. Ray Jewell	Law Enforcement Northern Area
Capt. Kenny Oliver	Law Enforcement Southern Area
First Sgt. Bruce Ballard	Law Enforcement Eastern Shore
MPO Allen Marshall	Marine Police Officer
MPO Grady Elles	Marine Police Officer

Commission Meeting

**12550
October 28, 2003**

Bob Grabb
Tony Watkinson
Chip Neikirk
Hank Badger
Kevin Curling
Jeff Madden
Randy Owen
Jay Woodward
Justin Worrell
Benny Stagg
Tracy West

Chief—Habitat Management Div.
Deputy Chief, Habitat Mgt. Div.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.
Environmental Engineer, Sr.

Virginia Institute of Marine Science (VIMS)
Tom Barnard and Lyle Varnell

Other present included:

Rebecca Francese	Jay Bernas	Peter Glubiak
Cynthia A. Sale	Ronald Martin	Jay Foster
Garnett Copeland	Paul Copeland	B.A. Jewell
Jeff Gordon	John Walsh	Lee Sprague
Jeff Way	Bob Winstead	Bob Liverwood
Elizabeth Ross-Clunis	Kevin Bodge	Tom Pritchard
John W. Midley	Clifford Schlotes	Mark Hodges
Rob Brumbaugh	Susan Gaston	Paige W. Hogge
Laura McKay	Joe DelCampo	Douglas Jenkins
Russell Gaskins	Kelly Place	Bryan Peak
William Keys	Harry Doernte	Rich Robins
Bob Fisher	Vara Stallings	
and others		

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Commissioner Pruitt called the meeting to order at 9:33 a.m. with all eight other Associate Members present.

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Associate Member Garrison gave the invocation and Commissioner Pruitt led the pledge of allegiance to the flag.

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Commissioner Pruitt swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

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Approval of Agenda: Bob Grabb, Chief-Habitat Management, asked the Commission to defer Item No. 5, Daniel R. Newton in the printed agenda until the Commission’s regular November meeting. **Associate Member Ballard moved and Associate Member Holland seconded the motion to continue item No. 5. The motion carried, 8-0.**

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1. MINUTES: Associate Member Birkett moved and Associate Member Holland seconded the motion to approve the minutes as presented. **The motion carried, 8-0.**

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2. PERMITS:

Bob Grabb, Chief-Habitat Management, gave the presentation on Page Two items A through B and his comments are part of the verbatim record. Page Two items are projects that cost more than \$50,000, are unopposed, and have a staff recommendation for approval. There being no questions from the Commission and no comments from the public, **Associate Member Garrison moved approval of the items A and B. Associate Member Holland seconded the motion, which carried, 8-0.**

2A. BOXLEY MATERIALS CO., #03-1461, requests authorization to construct a 53-foot long by 25-foot wide bridge elevated ten (10) feet above the existing streambed of Jordan Creek at the Fieldale Plant located on route 684 in Henry County. Recommend a royalty of \$225.00 for the encroachment over 450 square feet of State-owned subaqueous land at a rate of \$0.50 per square foot.

Royalty (encroachment over 450 square feet of state-owned bottom land @ \$0.560 per square foot	\$225.00
Permit fee	\$100.00
Total fees.....	\$325.00

2B. HONEYWELL INTERNATIONAL, INC., #03-2074, requests authorization to maintenance dredge up to 40,000 cubic yards of State-owned subaqueous material adjacent to their pier and River Water Pump House intake location at their Honeywell plant in the City of Hopewell. Recommend a time-of-year restriction that no dredging be allowed from March 15 through June 30 of any year.

Permit fee	\$100.00
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3. **CLOSED SESSION.** No session was held.

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4. **DANIEL R. NEWTON, #03-1389.** Commission review of the July 24, 2003, decision of the Accomack County Wetlands Board to approve the filling 6,000 square feet of vegetated wetlands along Chesconessex Creek in the Schooner Bay area of Accomack County. Continued from the October 7, 2003, Commission meeting. **The item was carried over until the Commission's Nov. 18th meeting.**

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5. **CHARLES W. DAVIS, #03-1147.** Commission review on appeal by 25 or more freeholders of the August 21, 2003, decision by the Essex County Wetlands Board to approve a permit to construct a community fishing pier, a launch ramp for personal watercraft and canoes, and a vinyl bulkhead at community property situated along Piscataway Creek.

Kevin Curling, Environmental Engineer, Sr. made the presentation with slides and his comments are part of the verbatim record. Mr. Curling explained that the project was about two miles above the Route 17 bridge in the tidal freshwater area of Piscataway Creek about seven (7) miles from the Rappahannock River. The project is located on a community lot in a 25-lot development, four of which are riparian lots. The applicant sought authorization to construct an 80-foot long bulkhead, a 12-foot wide by 40-foot long timber boat ramp, and a community pier.

Mr. Curling said that on August 28, 2003, Commission staff received a letter and a petition with 50 signatures from Mr. Peter Glubiak, representing the freeholders, noting their appeal of the August 21, 2003, Essex County Wetlands Board decision. As such, the appeal was considered timely under the provisions of Section 28.2-1311(B) of the Code of Virginia. The appeal alleges that the Essex County Wetlands Board failed to take into account (1) the balancing of public and private benefit and detriment, (2) the potential destruction of wetlands of primary ecological significance, and (3) the impacts to the adjacent wetlands and the ecologically critical upland areas surrounding the project.

The public hearing for this project began on July 24, 2003. Mr. Jay Foster, agent for the applicant, explained the location and construction details of the project. Mr. Ronald Martin also spoke on behalf of the applicant and reviewed the details of the development.

Six speakers spoke in opposition to the project. They were concerned with the impacts to the adjacent wetlands and the overall impact on the upper Piscataway Creek. They noted the lack of details on the project drawings and that the site was not staked. They also maintained that the presence of a public boat ramp at Route 17 made the community ramp unnecessary. A number of the protestants also requested a thirty-day extension so that a complete environmental assessment could be conducted.

The Virginia Institute of Marine Science Shoreline Situation Report stated that the project, as proposed, would directly impact approximately 590 square feet of Arrow Arrum/Pickrel Weed community and that most of the impacts were associated with shading from the pier.

Mr. Curling explained that the wetlands board continued the hearing to their August 21, 2003 meeting, so that accurate drawings could be submitted, the site properly staked to allow the board members to visit the site, and to give the protestants time for further research. During that August 21 hearing, Mr. Martin submitted and reviewed the new drawings for the board, stating that the timber boat ramp was designed for lightweight vehicles. He also noted that the operation of personal watercraft was regulated by other agencies.

Mr. Curling said that the wetlands board had visited the site so there were no photographs. He took photographs, however, and asked for permission to show them to the Commission. Commissioner Pruitt agreed, without objection, that the photographs could be seen. Mr. Curling's explanation of the photographs is part of the verbatim record.

Recounting the August 21 wetlands board meeting, Mr. Curling said Mr. Glubiak restated the concerns of the opposition. He noted that this project would impact wetlands of primary ecological significance and the adjacent upland resources. He also stated that the use of the boat ramp would further impact the wetlands of Piscataway Creek due to increased boat traffic, particularly from personal watercraft and jet skis. Six other speakers spoke in opposition to the project. Those speakers noted the significant negative impact and unreasonable use of the upper Piscataway and that the public detriments outweighed the private benefits to the 25 lot owners. Several speakers noted the impact that the project would have on their right to fish in the area. They also recognized the need for a public solution to water access, but maintained that this was not a public area.

Following the public testimony, Mr. Curling said the board discussed the project. The members noted that there were minimal direct impacts to tidal wetlands at the site and that the erosion and sediment control, resource protection area, and zoning issues of the upland development were outside their jurisdiction. The Board felt that the nature of Piscataway Creek itself would regulate the type of watercraft in the area, and that a no wake zone was the only alternative to regulate the operation of watercraft. Therefore, a motion to approve the bulkhead and boat ramp as proposed, with a request that the Board

of Supervisors investigate establishing a No Wake Zone in the upper Piscataway Creek, was made. That motion passed unanimously. Also, since the majority of the pier, and the issues surrounding the pier's use, are in the Commission's jurisdiction, the wetlands board made no decision on the pier itself.

Based on our review of the record, Mr. Curling said staff was unable to conclude that the Board erred procedurally in their review of this matter, or that the substantial rights of the appellants or the applicant have been prejudiced by their decision. The Board's decision was based on its understanding that they were to consider the tidal wetlands at the site and they felt that a decision based on the other issues would have been in excess of their jurisdiction.

The Model Wetlands Ordinance, however, while attempting to accommodate necessary economic development, directs the Board to also consider the impact of the proposed development on the public health, safety, and welfare. Inasmuch as there is already a public boat ramp in the nearby vicinity, and the proposed private boat ramp would be for the use of 21 non-riparian landowners, staff felt it was unnecessary. The subsequent use of the proposed ramp would also have negative impacts on the public resources. Therefore, according to Section 28.2-1313(1) of the Code of Virginia, staff recommended that the decision of the Essex County Wetlands Board be modified and that the boat ramp portion be denied.

Associate Member Jones asked the distance between the public boat ramp and the project. Mr. Curling said it was about two miles by water.

Commissioner Pruitt asked if all upland permits had been secured. Mr. Curling responded affirmatively.

Ronald A. Martin, representing Mr. Charles Davis and Mr. Mike Brizentine, said the Commission needed to understand that the project had been before the Board of Supervisors and the Planning Commission and all approvals had been given. The project will be constructed regardless of what takes place here, he said. The issues are what the common area will look like. The project has been developing over two years and has been before several public hearings. His comments are part of the verbatim record.

Mr. Martin said a permit was sought for the pier, bulkhead and boat ramp for the common area and there were two public hearings before the wetlands board (in July and August). The wetlands board gave its approval. Regarding the bulkhead, he explained there was significant erosion that would be prevented. Staff recommended denial of the boat ramp because citizens had indicated it was not necessary. The public boat ramp is not in the vicinity even if it is two miles away by water.

Mr. Martin asked if some additional photographs could be submitted to the Commission. He said they were not shown to the local board. Commissioner Pruitt asked the desire of

the Commission. Associate Member Holland moved and Associate Member Cowart seconded to receive the pictures. The motion passed, 8-0. Descriptions of the photographs are part of the verbatim record.

Mr. Martin questioned whether the nearby boat ramp was really a public boat ramp and available at all times to the public. He said if people used the property regularly, they would have to park on private property and all over the roadway. The pier, he said, would not have overnight moorings. The proposed boat ramp would be small (only 12-feet wide and 40-feet long), only for small fishing boats and there would be jet skis, but the ramp was necessary to protect the area from erosion by usage of the property without a proper facility. Mr. Martin felt that the local wetlands board decision should not be altered.

Associate Member Garrison asked if there would be signs on the proposed boat ramp that restricted overnight moorings and said they were for use only for subdivision owners and guests? Mr. Martin responded affirmatively.

Commissioner Pruitt asked if there was anything in the covenants that prevented the four riparian owners from seeking their own piers? Mr. Martin said he did not think so. If it were there, the covenants could be changed. It was hoped that the common area would be nice enough to accommodate all needs.

Mr. Peter Glubiak, representing the opposition, said he had numerous prepared remarks. He first read from the Essex County Comprehensive Plan, noting that the existing boat ramp was probably the most active in the county. In his opinion, the project was about enhancing the economic value of Mr. Martin's clients, who do not own riparian lots. He said the Commission was charged with reviewing these kinds of situations on a broader scale.

The Essex County Wetlands Board decided that the impact was going to be very small on a very small piece of property. They did not think on a large scale. They were asking the Commission to look at it on a broader scale, he said. Mr. Glubiak's remarks are part of the verbatim record.

What was originally stated as a small public launch area for canoes has now become a launch for larger boats, jet skis and other watercraft. The creek is narrow where they proposed the facility and not an appropriate place for it. Staff indicated that there was a public boat facility up the creek and that they felt homeowners should use it.

He cited the Code of Virginia where it lists the criteria when the Commission shall grant a permit. One item stated that the permit should be granted when the public benefit and private benefits exceed the public and private detriments. Mr. Glubiak said there was no public benefit and the private benefit was to the property owners. There was much public and private detriments, he added. He also noted that wetlands would be harmed and ultimately lost. The Board did not look at the broad picture.

He said the wetlands board decision was based on an incorrect review of the law and a narrow focus. He asked the Commission to concur with the staff report and its recommendation. Mr. Glubiak said there were many problems with the project; a road had already been put in. This was not an appropriate project. A 200-foot pier was not necessary and a boat ramp was not necessary either.

Lee Stephens, representing property owners Pollard and Bagby, who own 75-acres of marsh across from the project said there were two points to be illustrated: the creek was most narrow at the site of the project and the wetlands board did not notify his clients until seven days prior to the public hearing of the project. Mr. Stephens said his clients never received word when the upland permits were granted. Not until the creek project came up did his clients know of the project.

He stressed that the procedure had been flawed and that consideration had not been given to all the neighboring wetlands.

Commissioner Pruitt gave Mr. Martin two-minutes to respond. He said the Commission was not concerned with the upland activities. Mr. Martin said he did not believe the wetlands board took a narrow view of the project. His comments are part of the verbatim record. He said any questions regarding the first hearing were why there was a second hearing and why there was additional design work.

Commissioner Pruitt said there seemed to be a very big gap between the two opinions of the boat ramp. Mr. Martin said there were discussions—in great detail—on the boat ramp at the public hearings.

There being no further questions, Commissioner Pruitt put the case before the Commission. Associate Member Ballard had a question for Mr. Curling. He said the staff's argument on the boat ramp hinged on the Code's "necessary" economic development argument. Did the wetlands board discuss this issue? Mr. Curling said he did not believe they discussed necessity. The board did acknowledge that the ramp was at Route 17, but did not discuss the condition of the ramp. The wetlands board decision was based on the impact to the wetlands at the site.

Commissioner Pruitt asked if the wetlands board had a verbatim record? Mr. Curling said the first meeting was taped, but the August meeting was not taped. Only a written summary was provided.

Associate Member Holland said he saw nothing to indicate that the Commission should overturn the wetlands board's decision. He moved that the Essex County Wetlands Board decision be upheld. Associate Member McLeskey seconded the motion. Associate Member Garrison asked the motion to be amended to request the posting of signs for subdivision use only and for no overnight moorings. There were agreements to the

amendments. Associate Member Ballard said he would not support the motion and believed the case should be remanded to the Essex County Wetlands Board.

Commissioner Pruitt asked when the pier issue might come back to the Commission? Mr. Grabb said it was premature for the Commission to act until the wetlands issue was finalized. Commissioner Pruitt called the roll: Holland, yes; McLeskey, yes; Ballard, no; Birkett, no; Bowden, yes; Cowart, no; Jones, no; and Garrison, yes. There being a tie, the Commissioner voted no. The motion failed, 5-4.

Associate Member Ballard then moved that the case be remanded to the Essex County Wetlands Board with the reconsideration paying special attention to §28.2-1308, paragraph B of the Code of Virginia. Associate Member Holland seconded the motion, which passed, 5-3.

The Commission took a 10-minute recess.

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When the Commission reconvened Associate Member Birkett was recognized. He noted that Commissioner Pruitt has been with the Commission for more than 20 years and his birthday is tomorrow (October 29). He asked that the occasion be recognized. Commissioner Pruitt thanked everyone and joked that he hoped Mr. Birkett would enjoy being on DEQ's board. There was hearty laughter.

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- 6. VIRGINIA BEACH DEPARTMENT OF PUBLIC WORKS, #03-0641,** requests authorization to construct/undertake improvements to the Rudee Inlet infrastructure to reduce shoaling in the inlet, improve navigation and increase the efficiency of maintenance dredging operations.

Randy Owen, Environmental Engineer, Sr., made the presentation with slides and his comments are part of the verbatim record. Mr. Owen said the Inlet was located in Virginia Beach along the Atlantic Ocean. The oceanfront resort area is to the north and the Croatan Beach area is to the south. Commercial, naval and recreational boating interests utilize the inlet. A federal project channel was established in 1986 by the Corps of Engineers to accommodate increased boating traffic and combat the inlet's continuous shoaling.

The inlet is routinely maintained through dredging by the city and the U.S. Army Corps of Engineers. The city acts as the local sponsor. The city operates a river-class dredge for the inner portions, while a larger Corps dredge maintains the outer portion of the channel.

The existing Rudee Inlet infrastructure includes: a south breakwater, a timber weir about 35 years old, a rubble mound rock groin where the weir connects with the beach, a south jetty and a north jetty. The net transport of sand is to the north.

Mr. Owen said the city's proposal includes a 54-foot long south breakwater extension, 504-foot long replacement steel sheet pile weir, new rock groin and concrete cap, south bank revetment rehabilitation, north jetty sand tightening, concrete cap and 260-foot long extension and the dredging of approximately 14,100 cubic yards of bottom material for construction access and dune reconstruction.

Several property owners who reside and/or own property in Croatan Beach originally protested the project. Additionally, staff received a copy of a 152-signature petition signed by Virginia Beach residents that urged the Mayor and City Council to pursue emergency repairs of the deteriorated timber weir. The petition was dated May of this year.

The petitioners' and protestants' primary concern centered on the timing of the weir's replacement and the structure's role in maintaining the integrity of the adjacent beach and dune system. These resources, they said, protect their properties from coastal flooding. Central to their argument was the original proposal to relocate the weir 20 feet to the south which some felt would lead to a future expansion of the sand trap and would lead to increased beach erosion rates. Staff has since received revised drawings that now call for the replacement weir to be constructed (6 to 10 feet) north of the existing weir. This appears to have satisfied the majority of the protestants.

One protestant, however, remains concerned about current dredging practices within the sand trap, which he believes exceed that authorized by Congress and are responsible for increased localized erosion. In response, the city proposed a limited dune reconstruction.

The Virginia Institute of Marine Science had no objection to the project and believed that it was necessary to increase the efficiency of the maintenance dredging. However, they voiced concern over the weir's original southern realignment. They said it appeared to increase the size of the sand trap at the expense of the adjacent beach. Accordingly, they recommended replacing the weir immediately adjacent to its current location to minimize this impact. The Department of Environmental Quality is currently reviewing the project for a permit pursuant to their Virginia Water Protection Program. No other State agency commented on the project.

In summary, Staff concurred with the petitioner's concerns and the urgent need to replace the deteriorated timber weir. In fact, §28.2-1210 of the Code of Virginia requires that structures erected over State-owned subaqueous land, such as the weir, be properly maintained or removed should they fall into disrepair. Replacement has been needed for several years as evidenced by its overall condition and the City's own 2001 report.

Accordingly, pursuant to §28.2-1210 of the Code, staff recommended that the City be required to immediately schedule the weir's replacement. This replacement should be done prior to or at most concurrent with the other project components. Should the City elect not to fund the project in its entirety, staff recommended that the City be required to initiate the repair or replacement of the weir no later than December 31, 2003.

Commissioner Pruitt asked if the Commission had any questions of Mr. Owen. Associate Member Garrison asked how the groin replacement tied back into the land. Mr. Owen said there was an agreement that the groin must be replaced, in place. Mr. Owen said there was a letter in the file that asked for metes and bounds of the groin and that information had been provided.

Associate Member Ballard said the weir was clearly deteriorated and asked how long it had been deteriorating? Mr. Owen said at least two and a half years. Associate Member Garrison asked if the new weir would be constructed higher than the existing weir. Mr. Owen said "yes," but referred that question to the city's engineer.

Commissioner Pruitt asked for representatives of the city. Jay Bernas, project manager came forward with Dr. Kevin Bodge, coastal engineering consultant and John Walsh. Dr. Bodge explained that the landward portion of the weir had been raised between one and three feet; his comments are part of the verbatim record.

Associate Member Garrison interjected several questions and comments, during Dr. Bodge's statements, and expressed concern that dredging adjacent to the groin would cause problems to the groin itself.

Mr. Bernas pointed out that the city could not meet staff's recommended December 31, 2003 deadline. Following normal state procurement guidelines, the earliest the bids could be advertised would be early February and earliest notice to proceed would be late March. He said that also did not take into account that the Corps permit had not yet been received.

Commissioner Pruitt said the bottom line for him was the fact that the Commission was dealing with very valuable private property and every inch going into the Ocean cost them property. Private property rights were very important. Associate Member Garrison said he would recommend Dec. 31, 2003. Mr. Bernas said the city did not even have 90 percent plans. He said 100 percent plans were not scheduled until December first.

Commissioner Pruitt said there was an existing problem and that problem was having direct impacts on some of the city's citizens. It seemed to him that the city could go in to repair the weir without waiting for the rest of the project.

Associate Member McLeskey said he was one of the protestants and one of the property owners that the project affected. He said he was of the opinion, after talking with counsel,

that he was not in a conflict of interest and that he could look at the project objectively and fairly. His comments are part of the verbatim record.

Dr. Bodge explained the design of the new rock groin that would be constructed on the existing groin site. He also stressed that the project should be built together and not pulled apart into elements such as the construction of the weir separately. His comments are part of the verbatim record.

Associate Member Holland asked for details of the timetable from today to construction. Mr. Bernas responded that based upon normal procurement procedures the project could be advertised for bid Feb. 1 and a notice to proceed issued on March 29. He said the city had \$3.25 million for the project and that they wanted the project done as quickly as the residents. He said if the project was split, there might not be enough money to build the entire project.

There was an extensive discussion regarding the height of the proposed weir. The discussion is part of the verbatim record.

Commissioner Pruitt asked if any other residents wanted to address the Commission. Tom Pritchard, who lives in Croatan Beach and is a member of the Civic League and spent time in various hearings on the project spoke. He said he only wanted to talk about the weir. He had numerous items he wanted to enter into the record.

Mr. Pritchard said that everyone in Croatan, who was a property owner, needed the Commission's help to get the weir replaced on an emergency basis and to make sure that the mistakes of the past did not reoccur. The weir was originally constructed in 1966 under a Corps of Engineers permit. The concern was how much sand flowed northward along the shore. If the dam (or weir) were built too high it would starve the north beach and if were too low it would damage the south beach. The sand was monitored to determine the average drift. The weir and the jetties, he added, were to be maintained or removed. In 1983 the Army concluded that the wooden weir should be replaced in 15 years or by 1998. By 1983 they knew the annual rate of drift that was about 200,000 cubic yards. He presentation is part of the verbatim record.

In May 1996, City Council received a report that the timber weir was in a deteriorated state and needed replacement and knew of the violation of the 1966 permit. In 1998 the city was found guilty in federal court for not maintaining the inlet after a million-dollar pleasure boat ran aground in 1996. In response, the city dramatically increased its dredging, he explained. He then discussed, at length, the dredging history of the site, which is also part of the verbatim record.

Mr. Pritchard said the Rudee Inlet management study had many options, but the selected plan called for the repair of the landward end of the rock groin and structural repair of the timber weir. The City of Virginia Beach said it wanted the Beaches and Waterways

Commission to review the report and make a recommendation. The Commission recommended that the south structure and the weir be repaired first. The design phase of the project calls for everything to be done at once. He said it should not be done that way; repair the weir first because very dry sand flowed through the weir and devastated the updrift beach at Croatan.

Jeffrey R. Gordon, another Croatan property owner, said he purchased property there about 15 months ago. He said as a result of the recent hurricane, his 40 feet of dune, was breached and saltwater washed over his swimming pool. He said through his direct observation the bulk of the dredging was close to the shore and the groin. He said if nature had its way, there probably would have been more sand in front of his home and the dune would not have been breached. His comments are part of the verbatim record.

Commissioner Pruitt asked Mr. Gordon if his concerns were presented to city officials. Mr. Gordon said the city said construction of the weir could not be done quickly and had to be part of the total project. Commissioner Pruitt said his comments also should have been presented to City Council. Mr. Gordon said he was still trying to get a meeting with the mayor.

There being no further public comments, Commission Pruitt placed the case before the Commission.

Associate Member Garrison asked Dr. Bodge why the sand after it was dredged could not be placed on the southern beach. Dr. Bodge said if everything were working correctly, the beach would erode about 200,000 to 250,000 cubic yards annually. If the weir were allowed to continue to deteriorate, then returning sand would be practical.

Associate Member Garrison asked why they could not dredge in a sloped fashion or bowl shape in the "sand pit." Dr. Bodge said there was a limit to dredging set by the Corps of Engineers. He also noted that biweekly reports are submitted to staff and violations would be recognized. Dr. Bodge said the City was before the Commission for a permit to reconstruct the infrastructure and there were no proposals to change the dredging pattern. That was not an issue before the Commission. He said he set the 200,000 to 250,000 cubic yard number estimate in 1983 and he agreed that the weir needed to be fixed as soon as possible and built a little higher to give a little more benefit to Croatan Beach.

Dr. Bodge said, "If the permit was approved with conditions the city could not comply with, then it will only further delay the replacement of the weir". In his opinion, as an engineer, decoupling the weir from the rest of the project would waste time and cost more money.

Associate Member Garrison then made a motion that the permit be approved with the rock weir anchor groin to be anchored at the property line, i.e. no further west (really meant south) of the current location and that the dredging be done 50 feet off the toe of

the weir on a 3 to 1 slope or less and that the contract be executed by Feb. 15, 2004. Associate Member Ballard said he might second, but asked for the motion to be repeated.

Associate Member Ballard then asked for some clarifications. How was the west end of the groin to be tied into the property line? Associate Member McLeskey said he also was confused. City officials had said the groin would be in the same location and would be the same distance from the property lines. He said there would not be a physical tie in. According to a plat. Dr. Bodge said the distance was 45 feet. The discussion is part of the verbatim record.

Associate Member Garrison restated his motion: the City was to provide VMRC with dimensional limits of the rock groin with the west limit 45 feet from the existing property lines; the rock anchor should be no further south than the originally permitted location; the dredging should be kept 50-feet off the edge of the rock jetty and groin with a three to one slope beyond the 50-feet; and the contract should be ready by Feb. 15, 2004. Associate Member Ballard seconded the motion.

Associate Member Ballard then offered an amendment that the contract be let by Feb. 15, 2004 and that it specify that the weir be undertaken as the first step in the project. Associate Member Garrison agreed.

Associate Member Jones said the City indicated that depending upon how the wind blew, the weir might not be done first. If the wind were bad, that means they would wait. She believed it would be more cost efficient to begin elsewhere if the wind were bad. There was a discussion among Associate Members as to when the weir should be built. The discussion is part of the verbatim record.

Associate Member McLeskey asked Dr. Bodge, if there were major changes required redesigning the weir. Dr. Bodge said the plans were very close to completion and could be done by December 1. Associate Member McLeskey then asked if the north jetty had any benefit to Croatan Beach with its erosion problem? Dr. Bodge said there would be none. There was a lengthy discussion between Associate Member McLeskey and Dr. Bodge, who stressed again that if the project were separated into components that there would be no benefits in either cost or time. Those comments are part of the verbatim record.

Dr. Bodge said the City would not agree to conditions it could not comply with. He added that the most expeditious manner would be to approve the project as the City had requested.

Associate Member Jones said the City was clearly hearing the utter disgust, displeasure and frustration over the fact that the process had gone so long. She asked what the City would do if the Commission put a date in the motion or asked that the project contract be divided. Mr. Bernas responded that he did not know and would have to talk with his

superiors. Associate Member Garrison said there was a reason why the city could not have multiple contractors, maybe saving money and moving the project along quicker.

Associate Member McLeskey again suggested that dredging stay off the groin to prevent the sloughing off of the groin. Dr. Bodge challenged that the discussion did not involve dredging. Dr. Bodge said that dredging limits already were in effect for the federal project. Associate Member Ballard asked for the closest dredging limit to the groin. Dr. Bodge responded it was about 70 feet and the top of the slope would be about 10 feet or so away from the groin.

Associate Member McLeskey presented photographs dated August 14, 2003, that he said showed how the limits of dredging had been exceeded. Dr. Bodge said the signs denoted the bottom of the cut and it could be expected that the shoreline would laydown about 45-feet west of the line. The discussion is part of the verbatim record.

Associate Member Garrison said he did not understand why the layback was not an issue. Mr. Grabb, Chief-Habitat Management, said it was not an issue because as long as it was within the bounds of the federal project channel, the Commission had no jurisdiction.

Commissioner Pruitt said the concern of imposing an unrealistic deadline could prolong this thing if the city came back and challenged the decision in court. He asked Commission members now to comment directly on the motion.

Associate Member Jones said she was concerned about the time limit because if the City did not like it and disputed it; it would take that much longer. She said she wanted to convey in the strongest language that it needed to be done as soon as possible with the weir being done first if possible

Associate Member Holland said he would amend the motion to say that the Commission concurred with the Virginia Beach timeline and that the project be put out to bid on March 29, 2004. Commissioner Pruitt asked if it could go through as a friendly amendment?

Associate Member Garrison asked when it would go to work. Mr. Grabb said the City said March 29th would be the notice to proceed. Associate Member Holland said that was correct and the City would work toward it. It was agreed as a friendly amendment. Associate Member Cowart expressed concern that any date might be difficult.

Mr. Bernas said his timeline was rough and there were other factors at work as far as getting a permit from the Corps. "What if there were no bids?", he said.

Associate Member McLeskey asked for another amendment. He recommended that the flat part of the new weir be no less than as it was built originally. Associate Member

Garrison said he wanted to know why the weir would be reduced in height at the seaward end.

Dr. Bodge said the seaward end of about 100 feet would be dropped by about one foot because of hydraulic stress and the need for a hydraulic balance along the length of the weir since the landward portion of the weir was being raised. His comments and the discussion with Associate Members Garrison and McLeskey are part of the verbatim record.

Associate Member McLeskey asked for another amendment that would call for the weir to be the same height throughout its length. Associate Member Garrison said he would accept that amendment. Dr. Bodge interjected and said he did not believe the City would accept that condition. There was no good engineering reason for that condition.

Commissioner Pruitt asked for a moment to speak with the Commission's counsel. He then ruled that the motion would be held until after a luncheon recess. Following lunch, he said there would be an executive session to discuss legal matters related to this issue.

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The Commission returned to session and Commissioner Pruitt turned the chairman's gavel over to Associate Member Birkett and moved to the lectern and asked former Associate Member Henry Lane Hull to come forward.

Commissioner Pruitt said that many people remember Mr. Hull from Northumberland County. Before the presentation of the Certificate of Distinguished Service Commissioner Pruitt had some personal things to say about Mr. Hull. He noted Mr. Hull was a member of the Board of Supervisors and on the Regional Planning Commission and a former professor of Russian history. The watermen and recreational community were very impressed by Mr. Hull during his tenure. A sign in the rear of the room read "Watermen for Hull."

The certificate said: "The Commonwealth of Virginia Marine Resources Commission, the Honorable Henry Lane Hull. Be it known that on behalf of the members, employees and friends of the Commission, you are recognized for four years of loyal and dedicated service to the Virginia Marine Resources Commission. Your knowledge of the Commonwealth's commercial and recreational fishing industries and the habitat of the Chesapeake Bay and its tributaries was extremely helpful as the Commission struggled to balance the interests of the environmental, recreational, commercial and developmental communities. Your academic and governmental background provided a keen foundation and your almost daily involvement in activities in your community frequently enabled you to help the Commission better understand important aspects of many permits and fishing regulations considered during your tenure. Your personal care and concern exemplifies the true meaning of stewardship and the mission of the Commission to protect the Commonwealth's marine resources for present and future generations."

Commissioner Pruitt said he was proud and pleased to confer the certificate.

Mr. Hull said he considered his service on the Commission to be one of the highlights of his life. He said he esteemed the Commissioner as one of the greatest public servants "I have ever known." Mr. Hull added that staff and good work of the Commission is due, in large measure to his being the Commissioner.

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Associate Member Ballard moved that the meeting be recessed and the Commission immediately reconvene in closed meeting for the purpose of consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, or other specific legal matters requiring legal advice by counsel as permitted by Subsection (A), Paragraph (7) of § 2.2-3711 of the Code of Virginia, pertaining to: agenda item No. 6. The motion was seconded by Associate Member Garrison and carried unanimously, 8-0.

Commissioner Pruitt reconvened the meeting in public session.

Associate Member Ballard moved for the following:

**CERTIFICATION OF CLOSED MEETING
OF THE VIRGINIA MARINE RESOURCES COMMISSION**

WHEREAS, the Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, § 2.2-3712.D of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, the Commission hereby certifies that, to the best of each member's knowledge,

- (i) only public business matters lawfully exempted from open meeting requirements under Virginia law, and
- (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting by the Commission.

Associate Member Holland seconded the motion. Commissioner Pruitt held a Roll Call vote:

AYES: Ballard, Holland, Birkett, Bowden, Cowart, Garrison, Jones, McLeskey, and Pruitt.

NAYS: None

ABSENT DURING VOTE: None

ABSENT DURING ALL OR PART OF CLOSED MEETING: None

The motion carried unanimously, 9-0.

**Wilford Kale, Recording Secretary
Virginia Marine Resources Commission**

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Associate Member Garrison then withdrew his motion and Associate Member Ballard concurred.

Associate Member Ballard offered the following motion to approve the permit with the following five special conditions: 1) the west end of the groin be constructed no closer than 45 feet from the property lines as shown on the drawings; 2) City use its best efforts to issue a notice to proceed by March 29, 2004; 3) the weir be placed no further south than the existing weir; 4) weir and groin structure be constructed first unless weather conditions do not permit this to be done; and 5) the dredging of the sand trap be conducted in a manner so as to ensure compliance with the federal permit restrictions and be conducted in a manner to protect the groin structure. Associate Member Holland seconded the motion.

Associate Member McLeskey asked for clarification as to whether the groin was in the same footprint. Associate Member Ballard said the drawings showed that to be true.

Associate Member Garrison asked that the City staff report to the VMRC staff every 60 days on the progress of the project.

Commissioner Pruitt called the vote and the motion carried, 8-0.

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- 7. MIKE ZWICKLBAUER, #03-1161, requests authorization to construct a 5-foot by 115-foot open-pile private pier with a 12-foot by 18-foot L-head and 30-feet of 5-foot catwalk; 30 feet of 2-foot catwalk; one 11-foot by 11-foot floating dock and to construct a 16-foot by 33-foot open-sided boathouse adjacent to his property situated along Fishers Creek, a tributary to the James River in the City of Newport**

News. One adjoining property owner and three nearby residents protest the project.

Benny Stagg, Environmental Engineer, Sr., said the case was protested by one adjacent and three nearby property owners. It was the staff's belief that the protests had been withdrawn and that the project could be handled administratively.

Commissioner Pruitt asked if Mike Zwicklebauer was present or anyone who wished to speak to the case. No one responded. The case will be handled administratively, Commissioner Pruitt said.

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8. **DARRON CONNER, #03-1409**, requests authorization to construct a 40-foot long by 17-foot wide open-sided boathouse at a previously authorized pier adjacent to property situated along Back Creek in York County. An adjacent property owner protests the project.

Tracy West, Environmental Engineer, Sr., made the presentation with slides and her comments are part of the verbatim record. Ms. West said the property was located at the confluence of two branches of Back Creek in York County. He proposed to construct a 40-foot by 17-foot, open-sided boathouse adjacent to a private pier that had been authorized but had not yet been constructed. The pier and boathouse were proposed to be constructed adjacent to a point of land on the shoreline. Back Creek is over 1,000 feet wide in this location and the end of the pier was 100 feet from the channel, Ms. West said.

Mr. Hayden Ross-Clunis and Ms. Elizabeth Ross-Clunis, the adjoining property owners to the west, protested the project. They were concerned with the potential aesthetic impacts associated with the boathouse, including the view. They also expressed concerns regarding navigation and the use of the waterway by crabbers and recreational boaters. No oyster ground leases were affected by the proposal and no state agencies had commented on the project.

In staff's opinion, the boathouse appeared reasonably sized. In fact, if the adjacent property owner had not objected to the project, it would have qualified for the exemption contained in Section 28.2-1203 (A)(5) of the Virginia Code. Since the proposed open-sided design should minimize the visual impacts associated with the structure, staff recommended approval of the project.

Darron Conner, the applicant, said a shoal prevented him from coming directly off his property to the water with a pier.

Commissioner Pruitt asked if there were any questions? There being none he asked the opposition to come forward. Ms. Elizabeth Ross-Clunis, who owns the adjacent property, said the other neighboring property owner had no personal interest. She read her letter to the Commission of July 30, 2003. Her concerns were navigation, view and location. She said she would not oppose the boathouse if it were built in the location indicated on the application and not the stakes placed in the river at the site. Her letter is part of the verbatim record.

Mr. Bob Winston, a consultant, said discussions took place with Ms. Ross-Clunis regarding placement of the pier and boathouse. Mr. Conner does not believe there is water available at the location she proposed. Ms. Ross-Clunis said she felt that an extension to the pier might be required at her location to get to deeper water.

Mr. Conner said shallow water does come in front of his property and deeper water is off the point in the cove.

Commissioner Pruitt said in situations like this where there is not an environmental issue the Commission has encouraged the neighbors to get together to reach a compromise. The parties agreed to continue discussions in an adjacent room and try to reach a compromise.

The parties eventually came back before the Commission and indicated they agreed to relocate the pier and flip the boathouse to the other side of the pier. **Associate Member Garrison moved to approve the permit as agreed to by the parties with staff's concurrence. Associate Member Cowart seconded the motion, which was approved, 6-0.**

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9. PUBLIC COMMENTS: There were no comments.

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10. PUBLIC HEARING: Request to lower quota and adjust trip limits for the 2003/04 Spiny Dogfish fishery through amendments to Regulation 4 VAC 20-490-10 et seq., "Pertaining to Sharks".

Associate Member Birkett took over the gavel and Jack Travelstead, Chief—Fisheries Management explained that the public hearing involves some changes in how the VMRC manages spiny dogfish. The Mid-Atlantic Council has for many years managed the fishery with a coastwise quota that is set at about four million pounds. The Atlantic States

Marine Fisheries Commission went against the advice of its technical committees and raised the quota to about eight million pounds.

Following the ASMFC decision, there was an uproar from the environmental community. As a result a number of states along the coast decided not to change. The result was the curtailment of fishing, on a voluntary basis, so that it will not exceed the four million pound quota. The southern states (Rhode Island south) would agree to take no more than 500,000-pounds each. What now has the southern states over the barrel is the fact that Rhode Island could take probably three million pounds, long before the fish get to Virginia waters. Once the quota is established at 500,000 pounds, a trip limit must be set. Staff recommended a 3,000-pound trip limit.

Mr. Travelstead said he got a call from Pete Nixon who said that spiny dogfish caught here must be sold in Massachusetts where the remaining processors are located. Watermen have been told that transportation costs to get the fish northward is between 10 and 14 cents per pound. Watermen would get about 24 cents per pound or a profit of only 10 cents per pound. That is the information that Mr. Nixon had picked up.

The draft regulation sets a 3,000-pound trip limit and sets some additional reporting requirements. Since the quota is so small and could be taken in a short time, staff recommended that the buyers report to the agency on a daily basis so that landings can be recorded frequently.

Chairman Birkett asked for any questions. Hearing none, he opened the public hearing. Rick Robbins, representing Chesapeake Packing, spoke about trip limits. He encouraged the Commission to adopt the highest possible daily trip limit and said anything less than 5,000 pounds would hurt the industry in Virginia. Anything less is going to extend the fishery and push up fuel and operation costs. ASMFC initially adopted a 7,000-pound trip limit.

There were no more comments and Chairman Birkett placed the matter before the Commission. Associate Member Ballard asked Mr. Travelstead to comment on Mr. Robbins statements. Mr. Travelstead said industry had spoken of trip limits from 1,000 and as high as 5,000. Some wanted a lower trip limit to allow the fishery to progress through the winter months. There would be only a couple of dozen watermen in the fishery. It appears likely that the quota for 2005 would go back to four million pounds. He said he would not want more watermen to invest money in gear and then find them in a difficult position next year.

Associate Member Ballard moved that the Commission adopt the draft regulation and split the difference and make the trip limit 4,000 pounds. Associate Member Cowart seconded the motion. Associate Member Bowden said he talked with a number of industry members who wanted 2,500 to 3,000 pound limit. This was supposed to be a

by-catch fishery. If the number is high it could turn into a directed fishery. He said the comments echoed his personal concern.

The Commission vote was a 3-3 tie and Chairman Birkett voted in the affirmative. The motion passed, 4-3.

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11. Continued Discussion and Decision regarding proposed amendments to Regulation 4 VAC 20-950-10 et seq., "Pertaining to Black Sea Bass", to establish provisions for the 2004 commercial black sea bass fishery. A public hearing was held on October 7, 2003.

Jack Travelstead, Chief—Fisheries Management, presented the Commission with additional materials that were received in the days since the agenda was mailed to the membership. He said he had spoken at length at the earlier public hearing. There was however, additional information. The Finfish Management Advisory Committee met last week and voted 7-4 to recommend to the Commission that items 1 through 6 and 8 and another provision that would add ten new persons to the fishery by lowering the poundage figure to 7,500 pounds from the 11,000-pound limit. That would allow the new members.

On the FMAC recommendation, staff said the three of the four people who voted against it said they would have supported the vote except they were opposed to item 8 (the penalty for seabass potters for soak time) and the final "no" vote was opposed to adding 10 new people to the fishery. Staff recommended on the by-catch item that the quota should be doubled, but increasing the trip limit to 500 pounds might allow a directed fishery to occur. Therefore, staff believes a trip limit should be set at 10 percent of all other species on board, not to exceed 500 pounds. Given the poundage being dedicated to by-catch, staff also recommended that the trip limit be reduced to 100 pounds when 85 percent of the by-catch quota is harvested.

There has been another variation on the by-catch that would allow a minimum level (200 pounds) for any vessel. More harvesting than that would require a 10 percent level, up to 500 pounds, Mr. Travelstead said, noting it was yet another option. Regarding the soak time penalty for potters, he said those who favor the penalty were not potters and those who dislike the penalty were potters, who felt it was a legal activity at the time and should not be penalized. If a penalty was reasonable, staff believes potters should not be awarded additional quotas in 2004. This discussion is part of the verbatim record.

Commissioner Pruitt, who had returned, put the matter before the Commission. Associate Member Ballard asked what was the highest take by a boat. Mr. Travelstead responded that it was 15.35 percent of the total harvest. Associate Member Cowart asked about transfer of ITQ's only before the beginning of the season. Mr. Travelstead said staff anticipated coming back to the Commission annually until ASMFC decides how to

manage the fishery. Therefore, allowing transfers to take place only before the start of the decision is purely an administrative decision. Transfers in the middle of the season would make it difficult to find out what has been caught, against what would be transferred. He said he did not want to have a case where the quota had been caught and still an ITQ sold.

Associate Member Bowden said if the Commission goes to 10 percent or 500 pound by-catch quota would not a number of small boats be removed from the fishery? Everyone in the by-catch fishery has some history of landings. Mr. Travelstead said there are currently 194 boats that are eligible and 120 of them are trawlers and 29 are hook and line. The 29 hook-and-line fishermen would probably be eliminated from the fishery along with the potters.

Commissioner Pruitt asked the Commission to take action. Associate Member Bowden said that there should be a minimum by-catch level that would not discriminate against the small-time Virginia fishermen. His comments on the details of the proposal are part of the verbatim record.

Associate Member Bowden then moved 1) to set aside 17,000 pounds for medical exemptions and a committee be formed to handle those; 2) for by-catch a 200 pound minimum with 10 percent of catch not to exceed 500 pounds as the maximum; 3) the requirement for a directed fisherman set at 10,000 pounds this year to allow additional people from the by-catch list to join the directed fishery; and 4) take half of the remaining fishery and use it for by-catch and the other half and give it to directed permit holders. Associate Member Garrison seconded the motion, which was adopted, 6-0.

Mr. Travelstead asked for a clarification as to whether the other items on the list were not included in the motion? Associate Member Bowden answered affirmatively. Assistant Attorney General Josephson said the motion that was made and adopted was the only items involved. Associate Member Ballard said that means there was no adoption of transfer of permits or anything else.

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12. **PUBLIC HEARING:** A proposal to lower the minimum cull size from 3 inches to 2 ½ inches, for oysters taken from clean cull areas or harvested from areas for direct consumption.

James Wesson, Head—Conservation and Replenishment Department, said there were additional materials available since the earlier presentation. He said the request to lower the minimum cull size would not be appropriate because the stocks are so low and the effort being put together now with the Oyster Heritage Program. He said Dr. Roger Mann's (of the Virginia Institute of Marine Science) testimony shows that taking smaller oysters takes directly away from the potential for reproduction. Dr. Wesson said the small

economic gain would not make up for the loss. He added that shucking houses have indicated they do not want the small oysters. If the smaller oysters are sold, they are sold for a lower price and hurt the sales of the larger three-inch oysters. The state's fledgling oyster aquaculture industry also would be hurt.

Commissioner Pruitt opened the public hearing and recognized Dr. Rob Brumbaugh of the Chesapeake Bay Foundation, who strongly opposed the proposal. He noted that the size of oysters correlates to the number of eggs produced. The 2 ½-inch oyster reduces the output in comparison to the three-inch oyster by about 43 percent.

Paige Hogge, who initiated the request, said watermen need something to work on during this winter. She said the 2 ½-inch oysters would be used as raw-bar stock and there are raw-bars in Virginia who would purchase these oysters. She noted that when the oyster reaches three-inches, it contracts the diseases and dies. Why not capitalize on the oyster at 2 ½ inches and make money on it.

Douglas Jenkins, Twin Rivers Waterman's Association, said some years back when the issue was before the Potomac River Fisheries Commission, we recommended that the 2 ½ inch cull law would be helpful. The size law was not lowered and the oysters in question died. His comments are part of the verbatim record.

The public hearing was closed and Commissioner Pruitt placed the matter before the Commission. **Associate Member Cowart moved that the cull law remain at three inches. Associate Member Garrison seconded the motion, which passed, 6-0.**

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- 13. Continued Discussion and Decision** regarding proposed amendments to Regulation 4 VAC 20-650-10, et seq., to establish the 2003-2004 oyster harvest rules. Deferred from the October 7 Commission meeting.

James Wesson, Head—Conservation and Replenishment Department, said this item concerns the harvest rules for setting the reefs up as management areas. He said there were concerns about the private grounds that were located adjacent to the sanctuary areas. The closure is on the unassigned and public grounds 300 feet from the reefs. Already there is a system in place for working private grounds in the area.

Associate Member Cowart said he would abstain on this issue. Commissioner Pruitt said the staff recommended that the amendments be adopted. **Associate Member Ballard moved the adoption of the amendments. Associate Member Garrison seconded the motion, which passed, 5-0 with one abstention.**

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- 14. Continued Discussion and Decision** regarding an industry proposal to modify Regulation 4 VAC 20-720-10 et seq., “Pertaining to Restrictions on Oyster Harvest”, to allow for oyster harvest on a rock below the Rappahannock River Bridge. Deferred from the October 7 Commission meeting.

Jack Travelstead, Chief—Fisheries Management, said this is the case where watermen were asked to suggest another rock in the lower Rappahannock River that possibly could be opened. James Wesson, Head—Conservation and Replenishment Department, said some changes are also offered in other areas of the regulation. He said the area under consideration is the eastern part of the river from the Rt. 3 Bridge to the bay. Associate Member Birkett, who had assumed the chairmanship, asked Russell Gaskins to come forward. Mr. Gaskins said the Virginia Watermen’s Association asked for the area from Parrot’s Island to the silos, at Mosquito Point, to be opened. He said Parrot’s rock could be opened and some shoreline to the silos.

Mr. Gaskins thought he understood that nothing should be opened below the bridge “because our partners” would not like it. Who are “our partners,” he asked? Dr. Wesson said the partners in the Oyster Heritage Program, begun in 1999, include the Department of Environmental Quality, the Virginia Institute of Marine Science, the Chesapeake Bay Foundation, U.S. Army Corps of Engineers, NOAA and the Environmental Protection Administration are the partners. Mr. Gaskins believed it was not right; the “partners” should have no say in what is opened or not.

Dr. Brumbaugh of the Chesapeake Bay Foundation said it was not the intent for the area to remain closed forever, but to invest and make the area function better. There has been a certain understanding among the partners that the area would remain closed until the benefits of the program become more apparent. Unfortunately, this is not the time, he said.

Associate Member Cowart asked what would the criteria be for opening the area? Mr. Brumbaugh said he knew of no criteria, but that the VMRC and the Oyster Heritage Program should study and set such a level.

Associate Member Garrison said people say there are oysters in the area and that they need to be turned over. Scientists say leave them alone, what is the case, he questioned. Mr. Brumbaugh said Associate Member Cowart is one of the specialists. VIMS has said that oyster beds do not need to be worked to be productive, but the oyster beds in the Bay are a shadow of what used to be.

Commissioner Pruitt, who had returned, recognized Laura McKay of DEQ’s Coastal Program, who spoke against opening the rocks in question. She said the Oyster Heritage Program would take more years for real progress.

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Mr. Douglas Jenkins, Twin River Watermen's Association, said the area had been closed for 18 years and that's a long time to keep an area closed. He said Dexter Havens, formerly of VIMS, said one of the best things to do is work the oyster bottom; clean it up. He gave the same recommendation to VMRC. He said the area had been closed long enough; opening the area would help the watermen and not hurt a thing. He said watermen have expressed the opinion that the Oyster Heritage Program was not going to amount to anything. Not many oysters in the area are being produced, he added.

Robert Jensen of the Oyster Restoration Program said there are healthy oysters on his oyster rock at Mosquito Point. He said upwards to a million animals are there. He said Mr. Gaskins has a great idea. Since Hurricane Isabel came through, the area took a beating and maybe something could be recovered by harvesting these oysters. This Commission should open the area up.

Commissioner Pruitt closed the public hearing and put the matter before the Commission. Associate Member Cowart offered some comments. The oyster industry in Virginia is not doing well and there is a resource there that might be caught. However, the Commission is involved with the Oyster Heritage Program and there is a commitment to them. This is an experiment running since 1999 and is the best now for what the industry could be in the future for the native species, he explained. His comments are part of the verbatim record.

Associate Member Holland moved to accept the recommendation of the staff. Associate Member Garrison seconded the motion, which passed, 6-0.

Dr. Wesson said there are two places where oystermen can work. During the dredge service some large market oysters were found near the mouth of the Great Wicomico River and at the Nasemond Ridge off the shipyard in the lower James River in February and March. Staff would like these two areas added to the regulation.

Mr. Travelstead said the advertisement was broad to establish this year's oyster season. Some elements were adopted last month and this month staff brought back some other elements.

Commissioner Pruitt asked if anyone wanted to speak on these open areas for hand scraping. **Associate Member Holland moved that the staff recommendation be accepted. Associate Member Garrison seconded the motion, which passed, 6-0.**

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Commissioner Pruitt asked that the November meeting be moved to November 18 because of the Thanksgiving holiday. It would be the week before the regularly scheduled meeting. Regarding December, there is a similar situation, but the week before Christmas is the Atlantic States Marine Fisheries Commission meeting. The meeting could be

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moved to Monday, December 22nd instead of Tuesday. **Associate Member Ballard moved and Associate Member McLeskey seconded the motion for the Commission to meet on November 18th and December 22nd. The motion passed, 6-0.**

There being no further business, Commissioner Pruitt adjourned the meeting at 4:05 p.m. The next meeting date is Tuesday, November 18, 2003.

William A. Pruitt, Commissioner

Wilford Kale, Recording Secretary